

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ABANTE ROOTER AND PLUMBING, INC.,
individually and on behalf of all
others similarly situated

Plaintiff,

NO.: 1:16-cv-03588

-v-

NEW YORK LIFE INSURANCE COMPANY,

Defendant.

-----X

1114 Avenue of the Americas
New York, New York

January 30, 2017
11:45 a.m.

EXAMINATION BEFORE TRIAL OF BARDIA HARIRI,
a witness for the Defendant in the above-entitled
action, held at the above time and place, taken
before Danielle McMahon, a Notary Public of the
State of New York, pursuant to Notice and
stipulations between Counsel.

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A P P E A R A N C E S:

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A P P E A R A N C E S C O N T . :

NEW YORK LIFE INSURANCE COMPANY
GENERAL COUNSEL

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New York, New York 10010

BY: JEREMY N. KLATELL, ESQ.

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STIPULATIONS

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IT IS HEREBY STIPULATED AND AGREED, by and between the attorneys for the respective parties herein, that the sealing and filing of the within deposition be waived.

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IT IS FURTHER STIPULATED AND AGREED that this deposition may be signed and sworn to before any officer authorized to administer an oath with the same force and effect as if signed and sworn to before the officer before whom said deposition is taken.

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IT IS FURTHER STIPULATED AND AGREED that all objections, except as to form, are reserved to the time of trial.

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2 B A R D I A H A R I R I, a witness for the
3 Defendant, having first been duly sworn by a
4 Notary Public, was examined and testified as
5 follows:

6 EXAMINATION BY

7 MR. PARONICH:

8 Q. Please state your name for the
9 record.

10 A. Bardia Hariri.

11 Q. Please state your address for the
12 record.

13 A. 590 Avocet Drive, 4170, Redwood
14 City, California 94065.

15 Q. Dr. Hariri, have you ever given a
16 deposition before?

17 MR. WIENER: Before we start, I
18 just want to make sure we're in agreement
19 that all objections, other than as to
20 form, are reserved until trial?

21 MR. PARONICH: Yeah, and that's
22 the only stipulation we had last time,
23 correct?

24 MR. WIENER: Yes.

25 MR. PARONICH: Then let's go with

1 B. Hariri

2 that, my apologies.

3 Q. Dr. Hariri, have you ever given a
4 deposition before?

5 A. No.

6 Q. Okay. So, I'm sure your attorney
7 has filled you in, but I'll give you some basic
8 ground rules that will help us get out of here
9 quicker.

10 We're not going to be here that long, but
11 if, at any time, you need a break, that's
12 totally fine. You just let us know, and we'll
13 take one. The only issue with that is that if I
14 have a question pending, we like to try our best
15 to get an answer to that question and then take
16 a break, okay?

17 A. Sure.

18 Q. The court reporter is taking down
19 everything we say. So, in typical conversation,
20 and maybe at least me being from Boston, I know
21 I have a habit to kind of jump in and give an
22 answer before the question is done, but that
23 looks really disjointed in the transcript. So,
24 if you can try your best to just wait until I
25 finish the question, and then give an answer,

1 B. Hariri

2 that would be great, okay?

3 A. Thank you.

4 Q. And that's perfect. Another kind
5 of quirk of the process here is the court
6 reporter can't take down that the witness shook
7 his head or nodded his head. So, verbal answers
8 are best, okay?

9 A. Sure.

10 Q. Great. Also, with the
11 transcript, if you don't understand the
12 question, you just have to let us know, because
13 if I ask a question, and then you answer it,
14 there's no real way to tell if you didn't
15 understand, okay?

16 A. Sure.

17 Q. So, yeah, please feel free to let
18 us know. Another -- it's not really an
19 instruction, but just kind of another quirk of
20 the process is, nothing I ask today will result
21 in me wanting to know about any conversations
22 you had with your attorney, okay? So, if I ask
23 a question, and I will, what did you do to
24 prepare for the deposition, just try to remind
25 yourself, any conversations with you and your

1 B. Hariri

2 attorney, not what I want to know, okay?

3 A. Sure.

4 Q. Thank you. So, other than
5 conversations with your attorney, could you
6 please let me know what you did to prepare for
7 your deposition today?

8 A. No preparation, apart from the
9 conversation with attorney.

10 Q. Okay, and in preparing for the
11 deposition today, did you review any documents?

12 A. In advance, I have sent some
13 series of conversation I had with the concerned
14 company.

15 Q. Did you review e-mail
16 conversations that you had with a third party?

17 A. Yes.

18 Q. Okay.

19 MR. PARONICH: Please mark this
20 as Exhibit 1, please.

21 (One page notice of deposition
22 was marked as Plaintiff's Exhibit No. 1,
23 for identification, January 30, 2017,
24 D.M.)

25 Q. Dr. Hariri, I'm handing you a

1 B. Hariri

2 document that's been marked as Exhibit 1; it's a
3 notice of deposition. Is your understanding
4 that you're here today because of this notice?

5 A. Yes.

6 Q. Okay. Thank you. We just went
7 over the fact that you had reviewed some e-mail
8 correspondence with a third party; are there any
9 other documents that you recall reviewing, in
10 advance of the deposition today, to prepare?

11 A. The contract -- yes, the answer
12 is yes.

13 Q. Okay. Thank you. As you may
14 have guessed, my next question is what documents
15 were those?

16 A. My contracts with New York Life,
17 the contract with Live Leads, the concerned
18 company, and my training materials, some of the
19 trailing materials.

20 Q. Understood. So, I completely
21 understood the first two contracts you
22 mentioned; can you provide some clarity for me
23 on what training materials you reviewed?

24 A. The training materials regarding
25 the Do Not Call Lists.

1 B. Hariri

2 Q. And were those materials that you
3 were given by New York Life, during the process
4 of becoming an agent?

5 A. In my TAS agreement, yes.

6 Q. And so, Dr. Hariri, can you give
7 me your educational background, started with any
8 high school you completed?

9 A. High school, Bachelors in
10 Business, second Bachelors in Industrial
11 Psychology, MBA, Masters in Philosophy, my
12 second masters, and a Ph.D. in Political
13 Economics.

14 Q. That's it? So, starting with the
15 first BA -- actually, if you wouldn't mind, if
16 you can go through each, and let me know where
17 you obtained those degrees from?

18 A. Sure.

19 Q. Thank you.

20 A. Bachelor in Business Studies,
21 Westminster University, U.K.; Bachelors in
22 Industrial Psychology, London School of
23 Economics; MBA, University of Gloucestershire;
24 M.Phil, University of Wales; Ph.D., University
25 of Cardiff.

1 B. Hariri

2 Q. Thank you, and was your position
3 with New York Life your first job in the U.S.?

4 A. Yes.

5 Q. And did you have employment
6 oversees, before coming to the U.S.?

7 A. Yes.

8 Q. Okay, and could you please give
9 me an overview of that employment?

10 A. I was associate professor for
11 seven years with Cardiff, and was MBA course
12 coordinator for Cardiff for five years, and I
13 was executive assistant to the academic dean for
14 three years.

15 Q. Executive, I'm sorry.

16 A. Executive assistant to the
17 academic dean. So, like the PT assistant to
18 academic dean, basically.

19 Q. Understood. Thank you. And, so,
20 then what prompted you to come to the states and
21 take a position with New York Life?

22 A. Having taught corporate finance
23 for eight years, I believed it was a good time
24 for me to move on to industry and executive
25 corporate finance, and New York Life being the

1 B. Hariri

2 leading financial institution, as well as a
3 series of positive recommendations from a family
4 member, who's been working with New York Life
5 for the past 23 years, motivated me to move to
6 U.S.

7 Q. When you say positive
8 recommendations from a family member who's been
9 working with New York Life, have they been
10 working with New York Life as a customer or as
11 an employee?

12 A. As an employee.

13 Q. Okay, and do you know what
14 position they hold?

15 A. Yes.

16 Q. And what is that?

17 A. Financial services professional.

18 Q. And did you also want to become a
19 financial services professional?

20 A. Yes.

21 Q. And so, then, did you submit an
22 application to New York Life?

23 A. Yes.

24 Q. Do you recall the time?

25 A. Around May 2015.

1 B. Hariri

2 Q. And then, if you wouldn't mind,
3 could you please take me through the process,
4 after submitting that application, to starting
5 your employment, if you interviewed or --

6 A. Sure. I visited U.S. back to May
7 2015, for short period; I submitted the
8 application. Then I returned back to the U.K.;
9 We had, I believe, three phone interviews. I
10 came to the U.S., again, September 2015, for
11 another interview. Returned back to the U.K.;
12 another interview from U.K., and I came back to
13 U.S. permanently January 6, 2016, and I started,
14 I believe, a week after.

15 Q. And when you started, was it as a
16 TAS agent?

17 A. No.

18 Q. Okay. So, next, if you can give
19 me the progression of the different positions
20 you held at the company, I'd appreciate it.

21 A. Sure. First, I started as PTAS,
22 a provisional employee, I believe, for first
23 almost two months. By mid-March, I triggered to
24 TAS, which is full-time employee, and I'm still
25 on TAS.

1 B. Hariri

2 Q. Okay. Before becoming a TAS
3 agent, did you have to perform a series of
4 trainings with New York Life?

5 A. Yes.

6 Q. Could you please give me an
7 overview of those trainings?

8 A. The main learning objectives were
9 about product knowledge and sales cycle, I
10 believe, yeah.

11 Q. I'm sorry, would you mind --

12 A. Sales cycle.

13 Q. Understood. Thank you. And so,
14 now, as a TAS agent, could you please describe
15 for me your primary responsibilities?

16 MR. WIENER: I'm sorry, did you
17 say as a TAS or as a PTAS?

18 MR. PARONICH: I said as a TAS.

19 A. Right. Okay. I help business
20 owners and families with their tax reduction and
21 investment diversification strategies. This
22 requires me to get engaged with prospecting, and
23 servicing accounts, of the existing clients, my
24 clients, of my existing clients.

25 Q. Understood. Thank you. Now, I'm

1 B. Hariri

2 going to circle back to as a PTAS; were your job
3 responsibilities different?

4 A. No.

5 Q. And who is your current
6 supervisor?

7 A. Charla Aquino.

8 Q. Is that C-H-A-R-L-A?

9 A. Yes.

10 Q. And has Ms. Aquino been your
11 supervisor since you were a PTAS agent?

12 A. Yes.

13 Q. Okay, and have you had any other
14 supervisors?

15 A. No.

16 Q. Do you supervise any New York
17 Life employees?

18 A. No.

19 Q. I understand that you explained
20 that one of your job responsibilities is to
21 service your current clients. When you came to
22 New York Life, did you bring any clients with
23 you?

24 A. No.

25 MR. PARONICH: Off the record.

1 B. Hariri

2 (Whereupon a discussion was held
3 off the record.)

4 Q. So, Dr. Hariri, these trainings
5 that you went through, as a PTAS agent, were
6 there any of them that specifically related to
7 telemarketing regulations?

8 A. No.

9 Q. Did you receive any documentation
10 from New York Life that related to telemarketing
11 regulations?

12 A. Can you be precise about the
13 timing?

14 Q. Sure.

15 A. Overall, do you mean?

16 Q. No, I can be more precise.
17 That's fine. Did you receive documentation from
18 New York Life about telemarketing regulations
19 before you started as a PTAS agent?

20 A. Yes.

21 Q. What documents were those?

22 A. In my handbook, employment
23 handbook.

24 Q. And do you recall what those
25 documents were named or the information they

1 B. Hariri

2 provided?

3 A. Employment handbook, in that
4 handbook, basically.

5 Q. And do you remember any of the
6 information that was provided on those sheets?

7 A. The code of conduct concerning
8 the PTAS -- oh, sorry, concerning DNC and other
9 regulation compliance.

10 Q. And when you say DNC, you mean Do
11 Not Call, correct?

12 A. Indeed.

13 Q. And then, you also mentioned that
14 one of your job responsibilities was
15 prospecting, correct?

16 A. Yes.

17 Q. And to prospect, did you engage
18 in telemarketing?

19 A. Yes.

20 Q. And can you explain to me the
21 types of telemarketing that you engaged in?

22 A. You mean after or before the TAS
23 contract?

24 Q. Let's start with before, please.

25 A. Sure. I hired a telemarketing

1 B. Hariri

2 company named Live Transfers.

3 Q. And that was as a PTAS, correct?

4 A. PTAS.

5 Q. And so, we'll get into some more
6 detail with Live Transfers in just a little bit.

7 A. Sure.

8 Q. So, I apologize, I don't mean to
9 interrupt you.

10 A. Sure.

11 Q. But as a PTAS, was there any
12 other kind of telemarketing that you engaged in?

13 A. I made calls, yes.

14 Q. Okay, and when you made calls,
15 did you use the Gryphon System to make those
16 calls?

17 A. No.

18 Q. So, could you describe for me
19 what you did as a PTAS to make calls?

20 A. As a PTAS agent, I made calls
21 based on the database that was available online,
22 through Google, and at the same time, Live
23 Transfers made their own calls.

24 Q. Understood. So, what I'm trying
25 to narrow down is, I understand you would

1 B. Hariri

2 follow-up on leads from Live Transfers, but in
3 addition and apart from that, would you make
4 your own calls?

5 A. Yes.

6 Q. Okay, and was that based on phone
7 numbers that New York Life provided to you?

8 A. No.

9 Q. Okay. Where did you get those
10 phone numbers?

11 A. Internet.

12 Q. Do you know where on the
13 internet?

14 A. I searched for CPAs, business
15 brokers, mortgage brokers; so, different
16 websites.

17 Q. Okay, and what equipment did you
18 use to make those calls?

19 A. My personal phone.

20 Q. Do you know approximately how
21 many calls you made, based on internet data?

22 A. No.

23 Q. Would it be more than a hundred?

24 A. No.

25 Q. So, we have two types of

1 B. Hariri

2 telemarketing as a PTAS agent; we have Live
3 Transfers, we have the less than a hundred calls
4 you made, based on internet data. Was there any
5 other kind of telemarketing as a PTAS agent?

6 A. No.

7 Q. Now, I'd like to talk about as a
8 TAS agent, the kind of telemarketing you did;
9 can you please describe that for me?

10 A. I used the Gryphon System to make
11 calls to some centers of influence, such as
12 CPAs, business brokers, mortgage brokers.

13 Q. And have you made any
14 telemarketing calls that did not use the Gryphon
15 System, such as you made the less than hundred
16 calls based on internet data?

17 A. No.

18 Q. For the less than hundred calls
19 made as a PTAS agent, did you inform anyone at
20 New York Life that you were going to do that
21 before you did it?

22 A. Indirectly, yes.

23 Q. And could you explain to me what
24 you mean by indirectly, please?

25 A. I might have explained my

1 B. Hariri

2 prospecting strategies, by focussing on some
3 specific centers of influence, but I have not
4 specifically highlighted the mode of
5 communication.

6 Q. So, is it a fair
7 characterization of what you did to say that you
8 told your superiors of types of prospects you
9 intended to target, but not how you intended to
10 target them?

11 A. True, yes.

12 Q. For the telemarketing you did as
13 a PTAS agent, did you develop your own script?

14 A. Yes.

15 Q. Did you get a script from New
16 York Life that you based that on?

17 A. No.

18 Q. As a TAS agent, when you're
19 making calls through the Gryphon system, have
20 you also developed your own script?

21 A. Yes.

22 Q. Is that script based on a script
23 provided to you by New York Life?

24 A. Sorry, can you preface the
25 question; I need to make sure I got --

1 B. Hariri

2 Q. Of course. I think I had a
3 couple of things going on there. So, my
4 question now, as a TAS agent, I want to know if
5 the script you used is based on one provided to
6 you by New York Life?

7 A. Yes.

8 Q. So, as an agent for New York
9 Life, when you start prospecting, are there
10 parameters that are provided to you by New York
11 Life, for the type of prospects that they are
12 looking for?

13 MR. WIENER: Objection to the
14 form of the question, but you can answer,
15 if you understand it.

16 A. If you can clarify what
17 parameters mean?

18 Q. Does New York Life provide you
19 any parameters of income for potential
20 prospects?

21 A. No.

22 Q. Geographic region parameters?

23 A. No.

24 Q. Are there restrictions on the
25 states that you can prospect potential clients

1 B. Hariri

2 in?

3 A. Yes.

4 Q. And is that based on your
5 license?

6 A. Yes.

7 Q. So, would your prospecting
8 efforts be limited to the State of California?

9 A. Yes.

10 Q. When you did your prospecting,
11 apart from any parameters from New York Life,
12 did you develop a strategy of the types of
13 businesses that you wanted to target?

14 A. Yes.

15 Q. And could you describe that to
16 me, please?

17 A. My area of interest is
18 small/medium enterprises, between five to twenty
19 employees; that's my niche market.

20 Q. Why?

21 A. Businesses with five to fifteen
22 employees are relatively mature, and they have
23 tax reduction concern, and they have clear
24 objectives, and they want to insure sustainable
25 growth.

1 B. Hariri

2 Q. Now, as a PTAS agent, was there a
3 minimum amount of origination that your superior
4 expected of you?

5 MR. WIENER: Objection to the
6 form; you can answer, if you understand.

7 A. Right, the minimum, what is the
8 other variable; can you clarify the question?

9 Q. Sure, and so, I'll to do my best
10 to give an example, which I think would be
11 helpful.

12 A. Sure.

13 Q. And I don't know this to be fact,
14 but an example could be that your supervisor
15 said to you that "Dr. Hariri, New York Life's
16 expectation is that you'll sign up ten new
17 clients this month, or else there could be
18 disciplinary measures taken." Were there any
19 such parameters given to you?

20 A. The answer to that is yes.

21 Q. Okay, and instead of my example,
22 can you please give me the parameters?

23 A. In order to be qualified to be
24 triggered as the TAS agent, I had to meet a
25 minimum production.

1 B. Hariri

2 Q. And what was that minimum
3 production?

4 A. I cannot recall that.

5 Q. Okay. Do you believe that is in
6 your PTAS contract, that amount?

7 A. I believe so, yes.

8 Q. And I'm still speaking about just
9 PTAS, but as a PTAS agent, were there any
10 performance bonuses that were tied to amounts of
11 new origination?

12 A. I'm not too sure.

13 Q. Do you know if you personally
14 achieved any?

15 A. I believe so, yes. If not, I
16 would have not been able to progress and trigger
17 to TAS agent.

18 Q. Understood. Thank you. So,
19 again, Dr. Hariri, I'm going to limit my
20 question to your time as a PTAS agent, and I'd
21 like to know what your typical day would look
22 like?

23 A. As a PTAS agent?

24 Q. Yes, sir.

25 A. Start based on hours?

1 B. Hariri

2 Q. That would be great.

3 A. If I had a case, my first
4 activity was case management early in the
5 morning.

6 Q. So, I think that it would be most
7 efficient that I'm just going to ask a question
8 and jump in; I don't mean to be rude and
9 interrupt you.

10 A. Sure.

11 Q. What does case management mean?

12 A. Sure, if I have submitted any
13 case, if any follow-up would be required, if any
14 paperwork required.

15 Q. And just as a neophyte in the
16 industry, what would submitting a case be?

17 A. Submitting a new application,
18 from a new client, on the riders.

19 Q. Submitting a new case, is that
20 ever customer service related for an existing
21 client?

22 A. Yes.

23 Q. Okay. So, please go ahead.

24 A. Sure. So, case management,
25 making follow-up calls to my prospects, cold

1 B. Hariri

2 calling centers of influence, such as CPAs,
3 brokers, and getting involved with networking
4 events. Yeah, I believe that's PTAS, yeah.
5 Mainly -- and, of course, answering any calls
6 from Live Transfers.

7 Q. Sure. So, just with respect to
8 answering any calls from Live Transfers, do you
9 recall about how many of those you fielded a
10 day, as a PTAS agent?

11 A. In average, two once a day.

12 Q. Okay. Do you recall the most you
13 fielded in a single day?

14 A. Maximum three.

15 Q. And how could you tell that the
16 call coming in was from Live Transfers?

17 A. There was a number from Live
18 Transfers; I would see it on my phone.

19 Q. And when you say your phone, do
20 you mean your personal cell phone?

21 A. Absolutely, yes.

22 Q. Did any of the Live Transfers
23 ever come to a New York Life phone system?

24 A. No.

25 Q. So, Dr. Hariri, before you

1 B. Hariri

2 started at New York Life, in any of your
3 previous jobs, had you practiced telemarketing?

4 A. No.

5 Q. Okay. So, now, we're going to
6 move on to the portion where we talk about Live
7 Transfers.

8 MR. PARONICH: I'm about halfway
9 done, gentlemen. I'm happy to just keep
10 going, but this would be the last logical
11 breaking point.

12 MR. ROGERS: Are you good?

13 THE WITNESS: Yes.

14 Q. So, Dr. Hariri, how did you first
15 become aware of Live Transfers?

16 A. Internet search.

17 Q. Do you recall what that internet
18 search was?

19 A. Lead generation.

20 Q. And so, putting lead generation
21 into an internet search I'm sure returned a lot
22 of results; do you recall why you clicked on
23 Live Transfers?

24 MR. WIENER: Objection to the
25 form, but you can answer.

1 B. Hariri

2 A. It was not only one search. So,
3 no, I cannot recall why.

4 Q. Okay. So, let me try to ask it a
5 different way, a better way. Out of any of the
6 other lead generation companies out there, why
7 did you move forward with Live Transfers?

8 A. I know why.

9 Q. Okay. Could you let us know?

10 A. Very first thing on the website
11 of Live Transfers, I saw a number of logos on
12 their existing clients. I saw New York Life's
13 logo, as well as other credible and well-known
14 financial institutions.

15 Q. Understood. Before hiring Live
16 Transfers, what did you know about telemarketing
17 regulations?

18 A. Nothing.

19 Q. So, you see the New York Life
20 logo on their web page; what else prompted you
21 to move forward with them?

22 A. The logo, the conversation that I
23 had with the sales representative.

24 Q. So --

25 A. And --

1 B. Hariri

2 Q. Oh, I'm sorry, go ahead.

3 A. Sure, yeah, and my conversation
4 with my manager.

5 Q. Understood. So, I'd like to take
6 on each of these conversations, in turn.

7 A. Sure.

8 Q. Could you please tell me about
9 the conversation you had with Live Transfers?

10 A. I inquired about the process,
11 their business model, the price per lead, what
12 constitutes a quality lead or a bad lead, and
13 their refund policy.

14 Q. Understood. What did they tell
15 you about their business model?

16 A. My understanding was there will
17 be a prerecorded message, and if any of the
18 audience is interested to speak to an advisor,
19 they should press one. If they wish to be
20 removed from the list, they should press two.

21 Q. And what did they tell you about
22 their lead price?

23 A. I cannot recall now, but --

24 Q. Then that's fine.

25 A. Yeah, I cannot recall.

1 B. Hariri

2 Q. One of my basic rules I forgot to
3 go over at the beginning is, you also can't see
4 in the transcript that you guessed. So, if you
5 don't know, just let us know; that's fine. Do
6 you recall what they told you about their refund
7 policy?

8 A. If I receive a call from an
9 answering machine, that would constitute a bad
10 lead; therefore, I'm entitled to recourse for
11 refund. That's it, I believe.

12 Q. Did you ask them anything about
13 their relationship with New York Life, when you
14 talked to them?

15 A. No.

16 Q. Did you ever, and I mean at any
17 time, not just during the initial process, did
18 you ever visit their office?

19 A. No.

20 Q. Meet in person with any of their
21 employees?

22 A. No.

23 Q. Before hiring them, did you speak
24 with your supervisor?

25 A. Yes.

1 B. Hariri

2 Q. And can you tell me about that
3 conversation, please?

4 A. I asked my manager if she heard
5 about Live Transfers; I sent her the URL, the
6 link of the company, and I asked her if she had
7 heard any success story about these leads.

8 Q. And what did she say?

9 A. "No previous experience, go
10 ahead."

11 Q. Did you make any comment to her
12 about the New York Life logo on the website?

13 A. No.

14 Q. At any time, throughout the
15 course of the relationship with Live Transfers,
16 did you ask about the logo on the website?

17 A. No.

18 MR. WIENER: Objection to form.

19 Q. And to play that out, my
20 question, which I should have asked, was, did
21 you ever ask Live Transfers or anyone at New
22 York Life?

23 A. No.

24 Q. Did you have a single contact
25 person at Live Transfers?

1 B. Hariri

2 A. Yes.

3 Q. Who was that?

4 A. Sales representative Daniel
5 something, I believe so.

6 Q. Was it Danielle?

7 A. Danielle, Daniel, yeah, I'm not
8 too sure.

9 Q. Understood.

10 A. Yeah.

11 Q. So, I'll call her Danielle, for
12 the time being. Other than Danielle, did you
13 have contact with any other sales
14 representatives at Live Transfers?

15 A. No.

16 Q. How often would you talk to
17 Danielle?

18 MR. WIENER: Objection to the
19 form; you can go ahead and answer.

20 A. How often I used to talk to
21 Danielle, okay.

22 MR. WIENER: Just are you
23 intending to ask just how often he spoke
24 to her, or are you intending to ask the
25 broader question of how often he

1 B. Hariri

2 communicated with her?

3 MR. PARONICH: I'm asking about
4 talking right now, and then I'm going to
5 ask him about --

6 MR. WIENER: That's why I wanted
7 to be clear.

8 MR. PARONICH: Understood.

9 A. How often I talked to her?

10 Q. Yes, on the phone.

11 A. Three, four times in a week.

12 Q. And what would those telephone
13 conversations be about?

14 A. That was telephone conversations?

15 Q. Yes, sir.

16 A. Overall conversations, three,
17 four times in a week, maybe e-mail.

18 Q. I'll unpack it, we'll start
19 again.

20 A. Sure, thank you.

21 Q. How many telephone conversations
22 would you have with Danielle in a week?

23 A. Not much. I believe overall, for
24 whole process of partnership, I believe two,
25 maximum, three.

1 B. Hariri

2 Q. Okay. What would those telephone
3 conversations be about?

4 A. The first telephone conversation
5 was, again, about the process, their business
6 model, what constitutes a quality lead or a bad
7 lead, price per lead.

8 Q. Got it. Now I'm going to move on
9 to e-mail communications.

10 A. Sure.

11 Q. How often would you communicate
12 with her via e-mail in a week?

13 A. Three to four times in a week.

14 Q. And what would those e-mail
15 communications be about?

16 A. Inquiries about the system,
17 initially, if I had any question how to get
18 engaged with different functions of the website,
19 of the portal, sending her or him, I don't know
20 if it was Daniel or Danielle.

21 Q. I won't hold you to it. Let's
22 just call her Danielle for now.

23 A. Sending a couple of numbers,
24 phone calls, which I wanted to ask for refund,
25 because I believed they were not good quality

1 B. Hariri

2 leads. So, I wanted to refund, and sending her
3 the contents of the voice message I wanted their
4 system to record; that's it.

5 Q. Okay. Thank you, and I checked,
6 it is Danielle Morello.

7 A. Okay.

8 Q. So, at any time, did you discuss
9 the Telephone Consumer Protection Act or TCPA
10 with Danielle?

11 A. No.

12 Q. So, I think the best way to get
13 through the next round the questions is, could
14 you please tell me, from start, including the
15 recording of the voice message, to you talking
16 to a prospect on your cell phone, how the
17 process worked, as you understood it?

18 A. The Live Transfers, they had
19 their own database of numbers, making call to
20 their own prospect, and playing prerecorded
21 message. The content of the message was
22 provided by myself, giving a sentence or two
23 about what I do, and asking them if they're
24 interested, please press one to speak to me. If
25 they were not interested, and they wished to opt

1 B. Hariri

2 out from this special list, to press two, to be
3 placed into the Do Not Call List. If somebody
4 was interested, they could just simply press one
5 to speak to me, and I would address their
6 questions.

7 Q. Good. So, I understood that, and
8 now I'm just going to ask some more specific
9 questions. Do you know where the numbers in the
10 database came from?

11 A. They had their own system; I
12 don't know.

13 Q. Okay. The recorded message was
14 something you recorded?

15 A. No.

16 Q. Okay. Did you provide the
17 content of the message that they recorded?

18 A. Yes.

19 Q. For people who are not interested
20 and press two, would you ever get those
21 telephone numbers?

22 A. No -- I could extract them, yes;
23 I could extract them on the portal.

24 Q. And you just mentioned the
25 portal; could you explain to me what that was?

1 B. Hariri

2 A. There was a portal I could track
3 the number of people who wish to be into DNC and
4 the number of calls made, I believe, and if I
5 wanted to activate it or deactivate it, for my
6 campaign.

7 Q. Did you provide any other
8 parameters for the campaign to Live Transfers?

9 A. By parameters, you mean?

10 Q. Sure. So, did you provide the
11 fact that they should only make calls to
12 residents of California?

13 A. Right. Okay. Yes.

14 Q. And any other parameters?

15 A. Bay area, I said to them,
16 geographical, which was Bay area, and I
17 explained what I do. So, I wanted to make sure
18 they look into the contact numbers who need my
19 services. So, I explained what I do, actually,
20 so product and, of course, geographical.

21 Q. And was there a training video on
22 the portal?

23 MR. WIENER: Objection to the
24 form, but you can answer.

25 A. I cannot recall.

1 B. Hariri

2 Q. Do you recall if you received any
3 training from Live Transfers, before you
4 started?

5 A. Yes.

6 Q. And could you describe for me
7 what that training was?

8 A. Through the telephone and there
9 were e-mails, it addressed their own process,
10 and how I can actually request for refunds, how
11 I can activate it, how I can deactivate it.

12 Q. So, there was training on how you
13 can activate the campaign, how you can
14 deactivate the campaign, and I apologize, cause
15 I didn't hear --

16 A. How to request for refund.

17 Q. Okay. For bad leads?

18 A. Absolutely.

19 Q. Did you ever submit any requests
20 for refunds?

21 A. Yes.

22 Q. And did you receive them?

23 A. I believe so, yes.

24 Q. Do you recall an example of a
25 reason why you requested a refund?

1 B. Hariri

2 A. Yes.

3 Q. And could you describe that to
4 me, please?

5 A. It was an answering machine.

6 Q. Live Transfers provided terms and
7 conditions after you signed up with them; did
8 you read through those?

9 A. No.

10 Q. Did you ever have any
11 conversations with Live Transfers about not
12 calling cellular telephone numbers in their
13 database?

14 A. No.

15 Q. Did you ever have any
16 conversations with Live Transfers about the kind
17 of dialer that they used to make the calls?

18 A. No.

19 Q. How long did you use Live
20 Transfers?

21 A. Less than two months.

22 MR. PARONICH: Okay. Exhibit 2,
23 please.

24 (Two page e-mail, dated March 28,
25 2016, was marked as Plaintiff's Exhibit

1 B. Hariri

2 No. 2, for identification, January 30,
3 2017, D.M.)

4 Q. Dr. Hariri, you've been handed a
5 document that's been marked as Exhibit 2; it's
6 an e-mail that was produced in connection with
7 this case. I'm going to ask you some questions
8 about it, when you've had a chance to review it,
9 and just as a courtesy heads up, it's an e-mail
10 thread; so, the first e-mail starts on the
11 second page, at the bottom.

12 So, my first question about this e-mail
13 thread is, it's dated March 24th on the first
14 page, I'm sorry, on the front page. Did you end
15 up renewing your account with Live Transfers at
16 that point?

17 A. No.

18 Q. And why was that?

19 A. Poor quality of leads.

20 Q. On the front page, there is a new
21 script that mentions New York Life Insurance
22 Company; did that ever get implemented?

23 A. I believe so.

24 Q. So, do you recall when you
25 terminated the relationship with Live Transfers?

1 B. Hariri

2 A. Not the exact date.

3 Q. Okay. Do you recall if it was in
4 March or April, of 2016?

5 A. I believe it was by the end of
6 March.

7 Q. This script that you submitted,
8 did you run that by your supervisor, before
9 giving it to Live Transfers?

10 A. Yes.

11 Q. And did your supervisor approve
12 it?

13 A. After a small edit, yes.

14 Q. Okay. Do you recall what that
15 edit was?

16 A. Not really, no.

17 Q. That's okay. Did you receive
18 that edit via e-mail?

19 A. I think no; it was in a verbal
20 conversation.

21 Q. The first script that you used,
22 before this, did you also submit that to your
23 supervisor for approval?

24 A. Yes.

25 Q. And do you believe you also did

1 B. Hariri

2 this verbally?

3 A. Yes.

4 Q. Do you know if there was an edit
5 to that one, as well?

6 A. Yes.

7 Q. So, Dr Hariri, on the first page,
8 this bottom portion of the page is an e-mail
9 from you, correct?

10 A. Yes.

11 Q. And that is your e-mail at New
12 York Life?

13 A. Yes.

14 Q. And it's sent to Danielle
15 Morello. Now, looking at the document, does
16 that refresh your memory as to that being the
17 name of the person you interacted with?

18 A. Yes.

19 Q. So, you're sending this e-mail to
20 Live Transfers, and you say, "I wish to renew it
21 again," and that's at the end of March; why did
22 you change your mind?

23 MR. WIENER: Objection to the
24 form, but you can go ahead and answer.

25 A. Quality of leads and lack of

1 B. Hariri

2 efficiency in the prospecting through this
3 channel.

4 Q. Okay, and so, what changed in the
5 quality of leads between March 24th and the end
6 of March, when you wanted to stop?

7 A. I'm not too sure about the
8 question. If you don't mind, if you --

9 Q. I don't mind. So, I see, in the
10 an e-mail on March 24th, you say that you wish
11 to renew again. What I want to know is what
12 made you change your mind by the end of March,
13 seven days later?

14 A. There was no evidence of quality
15 leads. There was no return on investment, which
16 would justify that this is a good prospecting
17 strategy.

18 Q. Okay. Well, that's a perfect
19 segue into my next question. How many of the
20 Live Transfers leads were you able to convert to
21 clients?

22 A. None.

23 Q. Zero?

24 A. Zero.

25 Q. And was it a directive from your

1 B. Hariri

2 supervisor to terminate the relationship or was
3 that a decision that you made?

4 A. Decision that I made.

5 Q. Who paid Live Transfers; was it
6 you or New York Life?

7 A. Myself.

8 Q. And when you proposed to your
9 supervisor to engage this vendor, did you offer
10 to pay them yourself?

11 MR. WIENER: Objection to the
12 form, but you can go ahead and answer.

13 Q. I'll ask, because I'll identify
14 them this time. When you took the proposal to
15 your supervisor, that you wanted to engage Live
16 Transfers, did you offer to pay Live Transfers,
17 yourself?

18 MR. WIENER: Objection to the
19 form, but you can go ahead and answer.

20 A. It was clear for me that any
21 marketing campaign was my responsibility.

22 Q. Okay. Do you know how much you
23 paid Live Transfers, over the course of the two
24 month relationship?

25 A. Yes.

1 B. Hariri

2 Q. How much?

3 A. 720 something.

4 Q. And that resulted in no new
5 customers, correct?

6 A. Correct.

7 Q. In this e-mail, on the front page
8 Dr. Hariri, you say "I wish to renew it again;"
9 do you recall how many times you had to renew
10 your account?

11 A. I never renewed. It was once.

12 Q. Okay. Do you recall how many
13 leads this \$727 got you?

14 MR. WIENER: Objection to the
15 form.

16 MR. PARONICH: I'll stick with
17 it.

18 A. I don't recall; I don't recall.

19 Q. Do you know if it was more than
20 ten?

21 A. Possibly, yes.

22 Q. Was it less than 50?

23 A. Yes.

24 Q. Do you know if it was less than
25 25?

1 B. Hariri

2 A. Something in this region.

3 Q. Okay. Thank you. Other than
4 this lawsuit, did you receive complaints related
5 to the Live Transfers partnership?

6 A. Receive, what do you mean by
7 receive? Has anybody complained to me or --

8 Q. Yes, sir, that is what I'm
9 asking, if anyone has complained to you?

10 A. A number of calls, maybe two or
11 three asked -- it was not a complaint; they
12 asked me to put them to the Do Not Call List.
13 It was not a complaint; it was a request.

14 Q. Other than the request to be
15 placed on the Do Not Call List, did any other
16 transfers express any frustration over getting
17 the call?

18 A. No.

19 Q. Okay. When someone would ask to
20 be put on the Do Not Call List, is that
21 something that you could do with the portal with
22 Live Transfers?

23 A. Indeed, yes.

24 Q. And did you do that every time
25 that you received the request?

1 B. Hariri

2 A. Yes.

3 Q. Do you know any other employee of
4 New York Life that used Live Transfers?

5 A. No.

6 Q. Do you know any other employee of
7 New York Life that retained a third party vendor
8 that uses prerecorded messages?

9 A. No.

10 Q. Have you had any conversations
11 with non-attorneys about this lawsuit?

12 A. No.

13 Q. I understand the telemarketing
14 that you do now, as a TAS agent, through the
15 Gryphon System. Other than that telemarketing,
16 do you have any third party vendors that you use
17 for telemarketing, currently?

18 A. No.

19 Q. Okay. I just want to take a
20 quick break, and kind of review my notes
21 quickly.

22 MR. WIENER: Sure.

23 MR. PARONICH: And Lou and/or
24 Jeremy, can I grab you for a quick
25 second?

1 B. Hariri

2 (Whereupon the attorneys,

3 Mr. Paronich, Mr. Klatell and Mr. Wiener

4 left the room.)

5 Q. All right. Dr. Hariri, I have no

6 more questions, at this time, thank you.

7 MR. WIENER: We have nothing at

8 this time. Thank you.

9 MR. PARONICH: You guys are going

10 read and sign, right?

11 MR. WIENER: Yes, we do not waive

12 reading and signing. Is the witness

13 released from his notice?

14 MR. PARONICH: Yes.

15 MR. WIENER: Great. Thank you.

16 (Continued on page 50 to include

17 jurat.)

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B. Hariri

(Whereupon the proceedings were
concluded at 12:46 p.m.)

Bardia Hariri

Subscribed and sworn to
before me this _____ day
of _____, 2016

Notary Public

1 B. Hariri

2 I N D E X

3 WITNESS EXAMINATION BY PAGE

4 Dr. Hariri Mr. Paronich 5

5

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8 INFORMATION AND/OR DOCUMENTS REQUESTED

9 DESCRIPTION: PAGE: LINE:

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12 (NONE)

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16 RULINGS

17 PAGE LINE

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20 (NONE)

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B. Hariri

EXHIBIT INDEX

NO:	DESCRIPTION:	PAGE:	LINE:
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1 B. Hariri

2 CERTIFICATION

3
4 I, DANIELLE MCMAHON, hereby certify that
5 the within was held before me on the 30th day of
6 January, 2017.

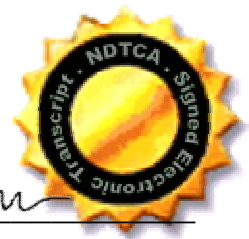
7 That the testimony was taken
8 stenographically by myself.

9 That the within transcript is a true and
10 accurate record.

11 That I am not connected by blood or
12 marriage with any of the parties. I am not
13 interested directly or indirectly in the matter in
14 controversy.

15 IN WITNESS WHEREOF, I have hereunto set my
16 hand this 1st day of February, 2017.

17
18
19 



20 DANIELLE MCMAHON
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